

**FILED**

DEC 09 2013

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

1 Michael Romero K29169  
2 P.B.S.P. D4-106  
3 P.O. Box 7500  
4 Crescent City, CA 95532  
5  
6  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11 MICHAEL ROMERO,  
12 Plaintiff,  
13 v.  
14 S. ELLERY, et. al.,  
15 Defendants.  
16

Case No. C12-1084 WHO (PR)  
PLAINTIFFS' MOTION FOR LEAVE  
TO FILE ADDITIONAL  
INTERROGATORIES

17 Plaintiff filed the original complaint in the present action on  
18 December 16, 2011 in the Superior Court of Del Norte County. On July  
19 3, 2012, the court dismissed the complaint with leave to amend. On  
20 August 24, 2012, plaintiff filed his First Amended Complaint (FAC). On  
21 January 17, 2013, the court screened the complaint and found six  
22 cognizable claims against staff at Pelican Bay State Prison as well  
23 as the former Secretary of CDCR, Matthew Cate. At this time the  
24 court also ordered discovery to commence. On April 2, 2013,  
25 plaintiff filed his first set of Interrogatories on all the named  
26 defendants. On July 5, 2013, the defendants filed their responses  
27 to plaintiff's first set of Interrogatories. On September 25, 2013,  
28 the defendants filed a motion to dismiss based on claims that:

1

16 the course of his or her duties does not give them free reign to  
17 use any level of force they want to. Plaintiff's excessive use of

1 (1) plaintiff's complaint is barred under Heck v. Humphrey's, 512 U.S. 477,  
2 (1994) ; (2) plaintiff failed to exhaust his administrative remedies ;  
3 (3) plaintiff failed to state a claim; and , (4) the defendants are  
4 entitled to qualified immunity.

5 On October 23, 2013 , plaintiff filed an opposition to the  
6 defendant's motion to dismiss. In the opposition plaintiff voluntarily  
7 terminated the claims for : failure to train , failure to investigate ,  
8 failure to supervise , due process violations , and deliberate indifference  
9 to medical needs . Plaintiff also released defendants Cate , Lewis , Tupy ,  
10 Ohland , Woods , Sayre , and Creed from any liability in the present  
11 complaint. As such , plaintiff's Eighth Amendment claim against  
12 defendants Ellery , Harman , and Grenert for excessive use of force  
13 is not barred under Heck v. Humphrey's . A finding of guilt for  
14 willfully disobeying a peace officer does not invalidate a claim for  
15 excessive use of force as disobeying or delaying a peace officer in  
16 the course of his or her duties does not give them free reign to  
17 use any level of force they want to . Plaintiff's excessive use of  
18 force claim was properly exhausted . Based on plaintiff's version  
19 of the events along with the evidence on record thus far , does  
20 state a claim for excessive use of force . And finally , there is no  
21 question that defendant's Ellery , Harman , and Grenert were on  
22 notice of their constitutional obligations regarding use of force after  
23 more than a decade of supervision at Pelican Bay by the Federal  
24 Court following Madrid v. Gomez , 889 F.Supp. 1146 (1995) .

25 Should the court deny the defendant's motion to dismiss , discovery  
26 will continue . Plaintiff is pro se with no formal legal training  
27 or experience . At each stage of the proceeding , plaintiff has attempted  
28 to clarify his claim and better follow the requirements and rules of

1 the court. On April 2, 2013, plaintiff incorrectly filed a uniform set of  
2 Interrogatories on all ten defendants that was overly broad and  
3 exceeded the number of Interrogatories permitted under Rule 33  
4 of the Federal Rules of Civil Procedure.

5 Through his opposition to Defendants' Motion to Dismiss, plaintiff  
6 has worked to better organize and clarify the claim against the  
7 three remaining defendants. Under Local Rule 33-3 as well as Rules  
8 26(b)(2) and 33 of the Federal Rules of Civil Procedure, plaintiff now  
9 respectfully requests the court's leave to file a new set of  
10 Interrogatories on defendants Ellery, Harman, and Grenert not to  
11 exceed the (25) twenty five Interrogatory limit prescribed in  
12 Rule 33 of the Federal Rules of Civil Procedure. With an increased  
13 understanding of legal standards and requirements, plaintiff  
14 argues that leave to file a new set of Interrogatories on each of  
15 the 3 defendants will allow plaintiff to better develop the relevant facts  
16 on the record prior to the summary judgement stage.

17  
18 I declare under penalty of perjury that the foregoing is true  
19 and accurate.

20  
21 Date: November 21, 2013

Respectfully Submitted,

M. Romero

Plaintiff, Pro Se

**PROOF OF SERVICE BY MAIL  
BY PERSON IN STATE CUSTODY**  
(Fed. R. Civ. P.5; 28 U.S.C. § 1746)

I, Michael Romero, declare:

I am over 18 years of age and a party to this action. I am a resident of:

Pelican Bay State Prison, in the County of  
Del Norte, State of California.

My prison address is:

P.O. Box 7500  
Crescent City, CA 95532

On 21 day of November, 20 13

I served the attached document

Motion for Leave to File  
Additional Interrogatories

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope,  
with postage thereon fully paid, in the United States Mail in a deposit box so provided at the  
above-named correctional institution in which I am presently confined. This envelope was  
addressed as follows:

<u>Robert Duncan</u>	<u>U.S. District Court</u>
<u>455 Golden Gate Ave. Suite 11000</u>	<u>Northern District of California</u>
<u>San Francisco, CA 94102-7004</u>	<u>450 Golden Gate Ave.</u>
	<u>San Francisco, CA 94102</u>

I declare under penalty of perjury under the laws of the United States of America that the  
forgoing is true and correct.

EXECUTED ON: 21 day of November, 20 13

M Romero  
Signature of Declarant

PELICAN BAY STATE PRISON  
P.O. BOX 7500  
CRESCENT CITY, CA 95532-7000

Name: Michael Romero  
CDCR #: K29169 Cell #: D4-106

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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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Northern District of California  
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